Supreme Court, U.S.
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CASE NUMBER

SUPREME COURT OF THE UNITED STATES

STEPHEN ROBERT BODELL PETITIONER

V.

JOHNNY OLIVER, DECEASED
AND
MARGARET JANE ANDERSON
AND
SARAH JANE BODELL, AN INFANT
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF KENTUCKY

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted by,
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67 pp

QUESTION FOR REVIEW

QUESTION ONE. Are parental rights protected by federal due process in the circumstance where a private citizen files a petition for parental termination in State court, and from that point on the process is under the complete control of the State and the severing of the parent-child relationship is effectuated by the State?

STATEMENT IN REGARD TO PARTIES AND IN REGARD TO CORPORATE AFFILIATION

The cover of this Petition contains the name of all parties at the Supreme Court.

Johnny Oliver is deceased. Petitioner Stephen Robert Bodell has no present connection to any corporation, foreign or domestic. To the best of petitioner's knowledge Margaret Jane Anderson has no present connection to any corporation, foreign or domestic. To the best of petitioner's knowledge infant United States citizen, Miss Sarah Jane Bodell, has no present connection to any corporation, foreign or domestic.

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MAIN BODY OF CERTIORARI PETITION

LOWER COURT REPORTS

In response to Supreme Court Rule 14. 1.(d), there were no reports by lower courts in the case. There are no citations for official or unofficial reports of the opinions and orders entered in the case by lower courts.

BASIS FOR JURISDICTION
IN THE SUPREME COURT

Order Denying Stephen Robert Bodell's Motion for Discretionary Review, filed in June 2001 in Supreme Court of Kentucky case 2001-SC-449-D, was entered on January 15, 2003. The Order was entered upon a divided 4 - 3 vote 19 months after the Motion was filed, and is in the Appendix.

28 USC 1257 provides in (a):

"(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari ... where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

The fundamental liberty interest claimed in this case under the U. S. Constitution's 14th Amendment, and right to federal due process protection of that interest, is the parent-child relationship between Stephen Robert Bodell and infant Sarah Jane Bodell.

LAW INVOLVED IN THE CASE

> The 14th Amendment provides in Section 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. ..., nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF CASE

The antecedent cases, in Kentucky, portray the abhorrent adoption of an American child by a deceased adult adopter; and the intentional, complete deprivation by two branches of State government of federal due process in terminating the parental rights of the child's natural father, a former member of the Kentucky Bar Association. This ongoing multi-year multi-court charade in Kentucky's state Court of Justice was, in part, a calculated effort to preclude infant citizen Sarah Jane Bodell from any opportunity to state in court that she wants to live with her father because her mother is a violent child and spouse abuser.

The parties in this case are: petitioner Stephen Robert Bodell, the child's natural father (hereafter Stephen); respondent Johnny Oliver, the deceased adult adopter (hereafter Mr. Oliver); respondent Margaret Jane Anderson, the child's natural mother (hereafter Ms. Anderson); and respondent Sarah Jane Bodell, an infant citizen of the United States (hereafter Sarah). Stephen is an adult native-born citizen of the United States.

Infant Sarah is the biological daughter of Stephen and his only child. Sarah is also a native-born citizen of the United States. Stephen is: 5/8 European German Caucasian, 1/4 native American Sioux Indian, and 1/8 European French Caucasian. The fact that this father and daughter are partly American Indian was repeatedly placed in court records and never subjected to dispute. An affidavit of Stephen's U. S. citizenship was filed in the trial court record early in the proceedings.

In June 2001 Stephen filed his Motion for Discretionary Review by the Supreme Court of Kentucky of the May 4, 2001 Opinion Affirming rendered by the Court of Appeals of Kentucky in case 1999-CA-2445-MR. 19 months later Stephen's Motion was denied by the 4 - 3 vote reflected in the January 15, 2003 Order found in the Appendix. The three who would have granted Discretionary Review are Kentucky's only female Justice, Justice Stumbo, and the two Special Justices appointed by Kentucky Governor Patton as a result of Stephen's repeated recusal motions.

Stephen's June 2001 Motion specified nine questions of law. Seven of these questions are quoted verbatim below

> "17. Is *strict scrutiny* the proper standard of equal protection review for the intentional and invidious denial by a State of constitutionally mandated procedural due process to a U. S. citizen, because he possesses native American Indian racial ancestry, in order to accomplish the termination of this citizen's parental rights?
>
> 18. Under the 14th Amendment to the U. S. Constitution: is it a deprivation of the

procedural due process component and/or a deprivation of the substantive due process component and/or a deprivation of the equal protection component for the lower courts of a State to intentionally, persistently, and contemptuously disobey the published ruling of the Supreme Court of the United States in *Santosky v. Kramer,* 455 U.S. 745 (1982) that parental rights are a fundamental liberty interest protected by procedural due process?

19. What compelling State interest is served, and if there be none, then what legitimate State interest is served, if any, by approval by the lower courts of a State, because a U. S. child citizen possesses native American Indian racial ancestry, of the attempted murder by incineration of this child citizen?

20. What compelling State interest is served, and if there be none, then what legitimate State interest is served, if any, by approval by the lower courts of a State, because a U. S. child citizen possesses native American Indian racial ancestry, of the purported adoption of this child citizen by a deceased adult adopter?

21. How does a human corpse demonstrate that it possesses the requisite good moral character and the requisite reputable standing in the community mandated by State statute as a necessary precondition to qualify as an adoptive parent?

22. Under the 14th Amendment to the U. S. Constitution: is it a deprivation of the substantive due process component and/or a deprivation of the equal protection component

for the lower courts of a State to unilaterally, and in that case only, extinguish that State's law that subject matter jurisdiction cannot be waived, in order to accomplish the termination of the parent-child relationship between U. S. citizens who are father and daughter because they possess native American Indian racial ancestry?

....

25. Does the conduct of the lower state courts of Kentucky in preceding questions above constitute manifest injustice, stated in Kentucky CR 61.02?"

Prior to his death, deceased adopter Johnny Oliver was an adult citizen. In September 1994 Mr. Oliver filed a petition in the Caldwell County, Kentucky circuit court in pursuit of termination of the parental rights of Stephen Robert Bodell and adoption of Stephen's daughter, Sarah Jane Bodell. Once Mr. Oliver filed his petition, this matter came under the complete control of the state government of the Commonwealth of Kentucky (except for review by the Supreme Court of the United States).

The elected circuit judge for Caldwell County, Judge Bill Cunningham, presided over the Sarah Bodell adoption case. Judge Cunningham was the first-named respondent in Supreme Court of the United States case 00-1701.

Stephen Robert Bodell filed repeated written motions for dismissal, on grounds of lack of subject matter jurisdiction and on grounds of failure to state a claim. Judge Cunningham routinely granted the motions of Mr. Oliver within a matter of hours to a few days. In his first judicial recusal affidavit Stephen stated: "The

cumulative pendency of written motions filed by this affiant on which Judge Cunningham has refused to act is 31 months."

Mr. Oliver's impending death from numerous cancers was self-admitted by him. Judge Cunningham determined that adoption of 8-year-old Sarah by a deceased person would be in her best interests. In fact Mr. Oliver died from his cancers during proceedings at the Supreme Court of Kentucky concerning proper procedure for recusal of circuit judge Cunningham. Several years after the death of Mr. Oliver, Judge Cunningham signed an Order, on Sunday, September 5, 1999, Margaret Jane Anderson's birthday, awarding adoption of Sarah Bodell to the deceased Mr. Oliver. Ms. Anderson was Sarah's natural mother; and Ms. Anderson (not Sarah) was Mr. Oliver's sole heir. Kentucky circuit judge Cunningham awarded Margaret Jane Anderson on her Sunday birthday an adoption of her own biological child, seeking to make Sarah Jane Bodell the only judicially ordered one-parented child in American history. The Order is in the Appendix (signed by Judge Cunningham on Sunday, September 5, and entered by the court clerk on September 9, 1999).

Judge Cunningham was informed, in written motion filed by Stephen, that *Santosky v. Kramer,* 455 U.S. 745 (1982) had held that parental rights shall be protected by federal procedural due process. Judge Cunningham boldly stated that *Santosky* was a "federal" case and not binding in his *state* judicial circuit.

Judge Cunningham was informed, in written motion filed by Stephen, that the Kentucky legislature had enacted the *Santosky* standard of

proof and that numerous published Kentucky decisions had articulated that this standard of proof must be used in parental termination proceedings and must be specifically stated in parental termination orders. Judge Cunningham refused to use the required clear and convincing evidence standard in the Sarah Bodell termination/adoption case and he absolutely *refused* to state any standard of proof in any termination and adoption order or judgment.

In his Motion for Discretionary Review Stephen stated the following in paragraph 13.

> "Judge Cunningham determined that the attempted blatantly unlawful incineration of Sarah, by her mother, when Sarah was a baby bears no legal relevance to Sarah's best interests. He did not determine that this did not happen. He determined that, assuming all facts to be true, the attempted incineration of this human child by her female parent has no legal relevance to the child's best interests."

Stephen filed a judicial recusal affidavit pursuant to KRS 26A.020. Judge Cunningham ordered the court clerk to *not* forward the recusal affidavit to the Supreme Court of Kentucky, in plain contravention of Kentucky law. Judge Cunningham then conducted an *ex parte* termination and adoption trial, also in plain contravention of Kentucky law. Stephen was prohibited from appearing at trial. Stephen's counsel of record, Princeton, Kentucky attorney Willard Paxton refused to appear in Stephen's stead. Judge Cunningham, *again* in plain contravention of Kentucky law, refused to even consider or address KRS 625.080 concerning replacement counsel for Stephen.

In September 1995 Judge Cunningham awarded Mr. Oliver a non-final and non-appealable termination and adoption. Mr. Oliver timely filed a post-judgment motion concerning Sarah's name, because Sarah wanted to be Sarah Jane Bodell and did not want to be Sarah Jane Oliver. Stephen timely filed a post-judgment motion based on *numerous* legal grounds, which requested that the non-final termination and adoption be vacated.

Stephen also filed a writ of mandamus/ prohibition action against Judge Cunningham as a respondent/defendant at the Court of Appeals in Frankfort, concerning his interference with the KRS 26A.020 recusal process. Mr. Oliver died during proceedings in this collateral case. Judge Cunningham filed a written and signed Response at the Court of Appeals, which later was also filed at the Supreme Court of Kentucky. In his Response he stated that he had "no objection" to voluntarily recusing in the Sarah Bodell termination/adoption case. The Supreme Court of Kentucky ruled that Stephen could refile his KRS 26A.020 judicial recusal affidavit, for immediate forwarding to the Supreme Court of Kentucky. Judge Cunningham, *still* in plain contravention of Kentucky law, spent three more years in county courthouse anterooms verbally telling the local court clerk to *not* forward Stephen's refiled recusal affidavit to the Supreme Court of Kentucky.

Stephen then caused Judge Cunningham to be summoned into U. S. District Court as a defendant. Shortly after being served with federal summons Judge Cunningham, on Ms. Anderson's Sunday birthday in September 1999, signed his

Order awarding Ms. Anderson final adoption of Sarah Jane Bodell, her own biological child.

Stephen timely appealed to the Court of Appeals. Princeton attorney Willard Paxton had already secretly entered the case for Ms. Anderson, and for several years has been counsel of record for adversaries Stephen Robert Bodell and Margaret Jane Anderson in gross violation of the professional code of conduct. A 3-judge panel was assigned to the case, selected by Chief Judge Paul Gudgel. Judge Gudgel was elected to the intermediate level appeals court from Lexington, Kentucky. Former Kentucky Chief Justice Stephens also was elected from Lexington. In addition to Judge Cunningham, Stephen Robert Bodell had caused former Chief Justice Stephens to be summoned into U. S. District Court as a defendant, concerning his interference with the KRS 26A.020 recusal process. The Court of Appeals did not address *any* point raised in *any* appellate brief. Instead this 3-judge panel dismissed the appeal, on their *sua sponte* raised ground that Stephen should have appealed from Judge Cunningham's silence in an earlier year.

Stephen timely proceeded to the Supreme Court of Kentucky. On discretionary review the dismissal of Stephen's appeal by the Court of Appeals was vacated and the remand ordered the Court of Appeals to decide the appeal "on the merits as fully briefed" (March 14, 2001 Order in the Appendix).

Less than 6 weeks after receiving the case back the same 3-judge panel rendered a 10-page Opinion Affirming. The opinion never addresses the complete deprivation of federal due process

by Judge Cunningham, *a point fully briefed.* The opinion also makes repeated *sua sponte* false statements (May 4, 2001 Opinion Affirming is in the Appendix).

In June 2001 Stephen again timely filed with the Supreme Court of Kentucky for discretionary review. After more than one year of total inactivity in the case by Kentucky's court of last resort, Stephen filed (in the summer of 2002) a second recusal motion in regard to Justices Graves and Johnstone. Stephen stated the same grounds which he had stated in his first recusal motion filed in the case in June 2001. In his summer 2002 recusal motion Stephen also stated that his motion was being filed as a step preparatory to requesting mandamus relief from the Supreme Court of the United States, specifically seeking an order that would direct the Supreme Court of Kentucky to move forward in case 2001-SC-449-D. Within a matter of days Stephen's second recusal motion was granted, resulting in the recusal of Kentucky Justice Graves and Kentucky Justice Johnstone. In the fall of 2002 Kentucky's Governor appointed two Special Justices pursuant to State constitutional provision. In Kentucky 4 favorable votes out of 7 are required to grant discretionary review. In January 2003 Order was entered upon the 4 - 3 split at Kentucky's court of last resort.

Supreme Court Rule 14.1.(g)(i) states that the present Petition shall also contain the following in the "Statement of the Case": specification of when and how federal questions sought to be reviewed were raised, the way in which they were passed on by lower courts, and reference by quotation or summary to the places in the record

where the matter appears.

QUESTION ONE, at the beginning of this Petition, concerns the complete deprivation of federal due process for parent Stephen Robert Bodell in State court parental termination proceedings.

As stated earlier in this Petition, in September 1994 the dying Mr. Oliver filed a petition in State court for parental termination and adoption. Pursuant to Kentucky law, on the date the petition was filed attorney Willard Paxton was appointed warning order attorney to inform Stephen Robert Bodell of the case. Mr. Paxton had been the elected circuit judge in earlier years, before Mr. Oliver filed his petition. Mr. Paxton became involved in a bitterly contested reelection contest for circuit judge with local prosecutor Bill Cunningham. Mr. Cunningham won, and Sarah Bodell became a tragic victim of the animosity between the former judge, Mr. Paxton, and the newly elected judge, Mr. Cunningham. Also, while prosecutor Mr. Cunningham had expressed irritation with this petitioner, Stephen, because he had been unable to obtain a conviction against this petitioner's client.

Stephen spoke with Mr. Paxton at his office about finding counsel to help ensure that Stephen was afforded due process in this parental termination case, especially in light of burgeoning prohibitions being imposed on him by Kentucky's executive branch parole division. Mr. Paxton: stated that he would not help Stephen find other counsel; stated that, whether or not the new judge released him as counsel of record for Stephen, he would refuse to seek a continuance or to appear in Stephen's stead if Stephen was not

permitted to appear at trial or other hearing; and directed Stephen not to contact his office again. Newly elected Judge Cunningham refused to release former judge Paxton as counsel of record for Stephen in the case; and Stephen continued subject to whatever prohibitions Ms. Anderson's parole officer friends in Kentucky's executive branch decided to impose on Stephen. In November 1998 Mr. Paxton sneaked in his written Entry of Appearance in the case as counsel for Stephen's only adversary, Margaret Jane Anderson, because the local circuit court clerk let the former judge file his written Entry *without* the legally required certificate of service of copies on the other parties in the case (November 3, 1998 Entry is in the Appendix). Stephen discovered this Entry one year after the fact while preparing his main brief for the Court of Appeals. Mr. Paxton also filed appellate brief for Ms. Anderson. Mr. Paxton has continued as counsel of record to Stephen Robert Bodell and Margaret Jane Anderson for more than 4 years.

On March 7, 1995, the first time that Stephen was permitted to appear in open court, Stephen informed Judge Cunningham that former judge Paxton was still counsel of record for Stephen but would refuse to appear for Stephen if Stephen was unable to appear. Stephen then orally requested that Judge Cunningham, before proceeding further in the case, should *consider, and* by written order *address*, KRS 625.080. KRS 625.080 made it mandatory for any Kentucky circuit court to *consider* appointment of counsel for a parent in an involuntary parental termination proceeding. Judge Cunningham's memorable response to Stephen's request that he

comply with KRS 625.080 was a silent shrug of the shoulders; and Judge Cunningham continued to proceed in the case.

On May 2, 1995, *again* in open court, Stephen informed Judge Cunningham that former judge Paxton was still counsel of record for Stephen but would refuse to appear for Stephen. Stephen again orally requested that Judge Cunningham, before proceeding any further in the case, should *consider, and* by written order *address,* KRS 625.080 concerning appointment of counsel. This May 2 request did not even obtain a silent shrug of the shoulders.

Judge Cunningham continued to proceed. At Mr. Oliver's request, Judge Cunningham scheduled a parental termination and adoption trial for August 8, 1995. The week before trial Judge Cunningham faxed a trial date change from August 8 to August 9, because he had just noticed that he had incorrectly scheduled two different cases for trial on August 8. Stephen was relegated to serving subpoenas on August 8. When subpoena was served on Kentucky parole officer P. M. Lehman, Stephen was informed that he would be immediately incarcerated in the penitentiary if he appeared at the August 9 termination and adoption trial or at a later hearing. Stephen was informed that this prohibition was a result of a closed-door meeting with Mr. Lehman's office partner, Margaret Jane Anderson's Princeton neighbor, Kentucky parole officer Kenneth Lewis. The affidavit of 62-year-old subpoena server Ralph Buford, concerning parole officer Lehman's August 8, 1995 prohibition and warning to Stephen, is contained in the Appendix to this Petition; the affidavit was filed in the

records at the circuit court, at the Court of Appeals, and at the Supreme Court of Kentucky.

Judge Cunningham proceeded to conduct an *ex parte* parental termination and adoption trial; and as stated at the beginning of page 8 in this Petition, "Judge Cunningham awarded Mr. Oliver a non-final and non-appealable termination and adoption".

Stephen timely filed a written motion under Kentucky CR 59 based on *numerous* legal grounds, which requested that the non-final termination and adoption be vacated. The Opinion and Order entered by the Supreme Court of Kentucky on March 14, 2001 (in the Appendix) specifically refers to Stephen's CR 59 motion as follows: "Although movant's timely postjudgment motion (filed on September 22, 1995) remained pending for nearly four years, his appeal was pursued in a timely manner following entry of the only order resolving his request for postjudgment relief on September 9, 1999."

Stephen's CR 59 motion specifies legal error in 21 separate paragraphs. Paragraph 6 of the motion focuses on the complete deprivation of federal due process. Paragraph 6 begins with the following. "6. The Courts of the United States have declared parental rights a fundamental liberty interest protected by the United States Constitution. The 14th Amendment to the United States Constitution guarantees to this Respondent a right of due process in the event of attempted infringement on parental rights." Paragraph 6 then discusses in some detail that: Stephen Robert Bodell himself was prohibited from appearing at trial and was prohibited from examining or cross-examining witnesses at trial;

the circuit court did *not* comply with KRS 625.080, and no one appeared for Stephen to examine and cross-examine witnesses. The Ralph Buford affidavit was appended to this CR 59 motion as an exhibit.

In September 1999 Judge Cunningham signed an Order on Sunday, September 5, entered on September 9, that denied Stephen's September 22, 1995 CR 59 motion.

Judge Cunningham refused to ever address KRS 625.080 in any order or judgment. Through March 2003 the extent of this judge's *considering* or *addressing* KRS 625.080 was his silent shrug of the shoulders on March 7, 1995 (eight years ago). Over a time period of several years Judge Cunningham both refused to release former judge Paxton as Stephen's counsel of record and refused *any* consideration of other counsel for Stephen pursuant to KRS 625.080.

In sum: (1) counsel of record, former judge Paxton, refused to appear for Stephen at the *ex parte* August 9, 1995 termination and adoption trial; (2) Judge Cunningham refused, at any time, to even consider appointment of replacement counsel under KRS 625.080; (3) Stephen was prohibited by Kentucky executive branch parole officers, under penalty of immediate imprisonment, from appearing at August 9, 1995 trial or later hearing. Judge Cunningham's September 1999 Order states: "The Court in reviewing the file and from its own recollection concludes that the Respondent failed to appear at the designated time for these motions." *Failed* is wrong. Stephen was *prohibited* from appearing.

The Ralph Buford affidavit was Exhibit 1 to Stephen's CR 59 motion. Stephen Robert Bodell

was deprived of any right to appear, or to examine and cross-examine witnesses, or to introduce and refute evidence, in the *ex parte* August 9, 1995 termination and adoption trial presided over by Kentucky circuit judge Bill Cunningham. In September 1999, *shortly after being sued in federal court*, Judge Cunningham finally denied the request for relief contained in Stephen's September 1995 CR 59 motion concerning the complete deprivation by two branches of Kentucky government of federal due process for this U. S. citizen parent.

Complete deprivation of federal due process was *fully briefed* by Stephen at the Court of Appeals. The POINT of error was stated to be:

> "POINT E. *The intentional complete deprivation of procedural due process for parent Stephen Robert Bodell and the refusal to allow counsel for parent Stephen Robert Bodell, by Caldwell judge Cunningham, in the inferior court termination and adoption proceeding constitutes palpable, substantial, and reversible error which requires the inferior court judgment be vacated and the petitions for 'adoption and termination' be dismissed as a matter of law.*"

In the argument of this POINT Stephen cited *Davidson v. Boggs*, Ky.App., 859 S.W.2d 662 (1993), and quoted from page 665 of *Davidson* as follows: "The opportunity to examine and cross-examine witnesses, to introduce and refute evidence, is central to the right of due process." In his Court of Appeals Brief Stephen repeatedly cited *Santosky v. Kramer*, 455 U.S. 745 (1982), and he also quoted extensively from the opinion delivered in *Santosky*. The Court of Appeals

refused to ever address Stephen's POINT E in either of the two decisions it rendered, complete deprivation of federal due process by Judge Cunningham. Before rendering its second decision the Court of Appeals was *specifically ordered* by the Supreme Court of Kentucky to render a decision "on the merits as fully briefed". The Court of Appeals also refused to recognize the decision in *Santosky v. Kramer.*

In granting Stephen's first discretionary review motion the Supreme Court of Kentucky did not reach the complete deprivation of federal due process question. Beginning at page 3 of this present Petition Stephen quoted verbatim 7 of the 9 questions of law specified in his June 2001 discretionary review motion. Question 17 included the following: "the intentional and invidious denial by a State of constitutionally mandated procedural due process to a U. S. citizen ... in ... the termination of this citizen's parental rights?" Question 18 included the following: "the lower courts of a State to intentionally ... disobey the published ruling ... in *Santosky v. Kramer* ... that parental rights are a fundamental liberty interest protected by procedural due process?" In the 4 - 3 denial of Stephen's second discretionary review motion the Supreme Court of Kentucky sidestepped addressing any legal question, federal or otherwise, including the complete deprivation of federal due process question.

ARGUMENT IN RE QUESTION ONE

QUESTION ONE asks: Are parental rights protected by federal due process in the

circumstance where a private citizen files a petition for parental termination in State court, and from that point on the process is under the complete control of the State and the severing of the parent-child relationship is effectuated by the State?

Supreme Court Rule 10 is entitled "Considerations Governing Review on Certiorari". It provides the following beacon light.

> "The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers: ... (c) a state court ... has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

Santosky v. Kramer, 455 U.S. 745 (1982) is an opinion frequently cited and quoted in the area of family law. With a moderate amount of strain, the language in *Santosky* allows for two differing interpretations. Under one interpretation of *Santosky* parental rights are protected by federal due process if the process and the severing are controlled by the State, regardless of who files the initial petition. Under this interpretation the decisions of Kentucky's state courts in *Bodell v. Oliver* conflict with the relevant decisions of the Supreme Court, including *Santosky v. Kramer.*

Under a second interpretation, Kentucky's state courts might say that *Santosky* did not directly speak to the circumstance where a private citizen files a parental termination petition, even though immediately thereafter the process is under the complete control of the State

and the severing is effectuated by the State. Under this interpretation Kentucky's state courts can seek to scoot scot-free; the guise being that since the Sarah Bodell termination and adoption was initiated by a private citizen, the entire process and severing can be carried out with a complete deprivation of federal due process. This dog should not be allowed to hunt; it is an egregious attack on the sanctity of the American family as a cornerstone of our national life, and the proceedings below exhibit a remarkable departure from the accepted and usual course of judicial proceedings.

Under this second strained interpretation Kentucky's state courts have decided an important question of federal law that has not been, but should be, settled by the Supreme Court. The important federal question is whether there is federal due process protection for parental rights in a State controlled termination proceeding initiated by a private citizen. This Petition seeks for the Supreme Court to take a closer look at the egregious attack foisted on this parent-child relationship by the Kentucky courts; and then subsequent to briefing to articulate that parental rights are protected by federal due process, including the rights to appear, to examine and cross-examine witnesses, and to introduce and refute evidence, in *any* State controlled parental severing *including one initiated by a private citizen.*

The 14th Amendment plainly states: "nor shall any State deprive any person of ... liberty ... without due process of law".

Santosky makes the following statement. "In *Lassiter*, it was 'not disputed that state

intervention to terminate the relationship between a parent and the child must be accomplished by procedures meeting the requisites of the Due Process Clause.'" 455 U.S., at 753. Kentucky's courts might suggest that the wording "state intervention" means federal due process protection is triggered only when the State files the initiating petition. *Santosky* also states the following. "When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." 455 U.S., at 753-754. Kentucky's courts might suggest that the wording "When the State moves" means federal due process protection is triggered only when the State files the initiating petition.

However, *Santosky* also makes the following statement. "Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires ...." 455 U.S., at 747-748. The severing is done by the State, regardless of who files the initiating petition.

With reference to *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), *Santosky* states the following. "The case casts light, however, on the two central questions here - whether process is constitutionally due a natural at a State's parental rights termination proceeding, and, if so, what process is due." 455 U.S., at 753. The parental termination proceeding is under the State's control, regardless of who files the initiating petition.

Santosky articulates that parental rights are a fundamental liberty interest. "We therefore reject

respondent Kramer's claim that a parental rights termination proceeding does not interfere with a fundamental liberty interest." 455 U.S., at 754, footnote 7.

Santosky also refers to *Mathews v. Eldridge*, 424 U.S. 319 (1976), making the following statement.

> "In *Lassiter*, the Court and three dissenters agreed that the nature of the process due in parental rights termination proceedings turns on a balancing of the 'three distinct factors' specified in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure."

455 U.S., at 754. *Santosky* also notes that the minimum requirements of procedural due process are a matter of federal law, 455 U.S., at 755.

Part III of the opinion in *Santosky* provides further discussion concerning the process due in parental rights termination proceedings. "In parental rights termination proceedings, the private interest affected is commanding; ...." 455 U.S., at 758. "'The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss."' *Goldberg v. Kelly*, 397 U.S. 254, 262-263 (1970), ..." 455 U.S., at 758. "*Lassiter* declared it 'plain beyond the need for multiple citation' that a natural parent's 'desire for and right to "the companionship, care, custody, and management of his or her children"' is an interest far more precious than any property right." 455 U.S., at 758-759.

The answer to QUESTION ONE, asked in this Petition, should be *yes*. Parental rights should be protected by federal due process in *any* termination proceeding which is under State control and in which the State effectuates the severing; and this federal due process should include the right to appear at trial, the right to examine and cross-examine witnesses at trial, and the right to introduce and refute evidence at trial. The 14th Amendment is one of a small number of constitutional amendments that were the direct result of the bloody internal war in this great nation. The 14th Amendment specifically prohibits *any State from depriving any person of liberty without due process of law.* Certiorari review should be granted in *Bodell v. Oliver* to permit a closer look at the egregious federal constitutional deprivations inflicted on the Stephen and Sarah parent-child relationship by the Commonwealth of Kentucky.

The "three distinct factor" analysis specified in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) is applicable in *Bodell v. Oliver.* When the State controls the process and carries out the severing, whether a petition for parental termination is filed by a State actor or by a private citizen is *a distinction without a difference.*

The first factor specified in *Mathews v. Eldridge* is "the private interests affected by the proceeding". The private interest affected is the right to be a parent. *Santosky* stated: "In parental rights termination proceedings, the private interest affected is commanding ...." 455 U.S., at 758. In a parental rights termination proceeding the private interest affected *remains constant*, whether the initiating petition is filed

by a State actor or by a private citizen.

The second factor specified in *Mathews v. Eldridge* is "the risk of error created by the State's chosen procedure". There is no variance in Kentucky procedure between a termination proceeding initiated by a State actor and a termination proceeding initiated by a private citizen; and therefore the risk of error created by the procedure *remains constant*, whether the initiating petition is filed by a State actor or by a private citizen.

The third factor specified in *Mathews v. Eldridge* is "the countervailing governmental interest supporting use of the challenged procedure". As with the second factor, there is no variance in Kentucky procedure; and therefore the governmental interest *remains constant*, whether the initiating petition is filed by a State actor or by a private citizen.

Petitioner again quotes *Santosky*: "In *Lassiter*, the Court and three dissenters agreed that the nature of the process due in parental rights termination proceedings turns on a balancing of the 'three distinct factors' specified in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) ...." 455 U.S., at 754. Petitioner argues that the nature of the process due, in parental rights termination proceedings controlled by the State and in which the severing is effectuated by the State, should be the same whether the initiating petition is filed by a State actor or by a private citizen. Petitioner further argues that the nature of the process due should be federal procedural due process, including at least the right to appear at trial, the right to examine and cross-examine witnesses at trial, and the right to introduce and

refute evidence at trial.

The cover of this Petition states ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY. More specifically, petitioner seeks review of the May 4, 2001 Opinion Affirming rendered by the Court of Appeals of Kentucky (in the Appendix). The March 14, 2001 remand entered by the Supreme Court of Kentucky (in the Appendix) begins with a 1-sentence first paragraph: "The motion for review of the decision of the Court of Appeals is granted, the Court of Appeals opinion and order dismissing is vacated, and the case is remanded to the Court of Appeals for decision on the merits as fully briefed." The May 4, 2001 decision of the Court of Appeals was a result of the remand.

At page 16 above in this Petition Stephen quoted verbatim his POINT of error E contained in his Court of Appeals Brief, which includes the following: "POINT E. *The intentional complete deprivation of procedural due process for parent Stephen Robert Bodell ... constitutes ... reversible error ....*" POINT E was *fully briefed* in Stephen's red-covered brief timely filed with the Court of Appeals. Stephen stated at pages 9 and 10 above in this Petition that the May 4, 2001 Court of Appeals opinion never addresses Judge Cunningham's complete deprivation of federal due process. This 3-judge appellate panel contemptuously disregarded the order from the Supreme Court of Kentucky that it was to decide the appeal on the merits *as fully briefed.* The Court of Appeals refused to address Stephen's fully briefed POINT E, and then the Supreme Court of Kentucky, in its divided 4 - 3 vote, side-stepped Stephen's POINT E by declining to review

the May 4, 2001 decision of the Court of Appeals. This deprivation of an opportunity to be heard on POINT E is a sequentially separate deprivation of federal due process by the Kentucky judiciary.

The May 4, 2001 Opinion Affirming is in the Appendix. The opinion does not mention deprivation of federal due process at trial. And *Santosky* is never mentioned, even though it was cited and quoted in the red-covered brief under some of the POINTS which the 3-judge appellate panel did address. The same lead appellate judge, Kentucky Judge Miller, spoke favorably of parental rights and *Santosky* in other places. In *O.S. v. C.F.*, Ky.App., 655 S.W.2d 32, 33 (1983) Judge Miller stated as follows. "Parental rights are so fundamentally esteemed under our system that they are accorded due process protection under the 14th Amendment to the United States Constitution, when sought to be severed at the instance of the state. *See Santosky v. Kramer* ...." And in footnote 1 beginning at the bottom of page 33 in *O.S. v. C.F.*, Judge Miller stated as follows. "Further, it is arguable that *Santosky* only applies to cases of direct state severance of parental rights and has no application to cases where a private individual seeks to terminate parental rights to gain an adoption."

The May 4, 2001 opinion in *Bodell v. Oliver* written by Judge Miller presents an abysmal departure from the accepted and usual course of judicial proceedings and also exhibits the egregious deprivation of a fundamental liberty interest, which is supposed to be protected by the due process clause of the 14th Amendment. The law dictionary states as one meaning of fraud, "anything calculated to deceive". Concerning

fraud the law dictionary also states, "as distinguished from negligence, it is always positive, intentional". It was stated at page 10 above in this Petition that the May 4, 2001 opinion "also makes repeated *sua sponte* false statements". Not only does this opinion never address the complete deprivation of federal due process POINT of error, but it also intends to deceive in regard to POINTS of error it does address. It is the *only* unsigned opinion petitioner has ever seen out of dozens of opinions from the Court of Appeals of Kentucky.

The 3-judge panel, in 4 paragraphs contained at pages 7 and 8 of the May 4, 2001 opinion, engages in a brazen deception. The 4 paragraphs begin 4 lines from the top of page 7 with the paragraph that states: "S.R.B. also contends that the circuit court lacked jurisdiction ...." The key to the fraud is at the middle of page 8 with the panel's statement: "S.R.B., however, never re-filed his motion under KRS 26A.020." In common sense terminology this statement is a whopper. The statement is intended to deceive any reader of the opinion who has little or no familiarity with the record and who has little or no knowledge of details of Kentucky law. The 3-judge panel *knew* that Stephen was supposed to *refile an affidavit and not a motion*; and the panel knew that Stephen had *repeatedly refiled* his KRS 26A.020 recusal *affidavit*, precisely in accordance with the May 23, 1996 Opinion and Order of the Supreme Court of Kentucky.

The Kentucky Revised Statutes provide 2 judicial recusal roads. KRS 26A.015 provides for filing a recusal *motion*. KRS 26A.020 provides for filing a recusal *affidavit*. *Nichols v. Com.*, Ky.,

839 S.W.2d 263, 265 (1992) addresses Kentucky's dual recusal opportunity. "When a party or counsel seeks to disqualify or recuse a judge from proceeding further in any matter, a motion can be filed with the judge under KRS 26A.015 or an affidavit pursuant to KRS 26A.020." The May 23, 1996 Opinion and Order of the Supreme Court of Kentucky in *Bodell v. Cunningham* is in the Appendix. This Order states at the end: "provided, however, appellant may refile his affidavit for recusal pursuant to KRS 26A.020." The circuit court CASE HISTORY was a part of the record before this 3-judge panel. Page 14 of the HISTORY shows refiling of Stephen's *affidavit* on September 25, 1997 and refiling of the affidavit *again* on December 18, 1997. Due in large part to Judge Cunningham's own conduct, over a 7-year time period, the KRS 26A.020 recusal process concerning this judge was completely stifled.

After *Santosky* was published, the Kentucky legislature passed laws adopting the "clear and convincing evidence" standard for involuntary parental terminations and Kentucky case law required that orders in involuntary terminations specifically recite that the "clear and convincing evidence" standard was used. *See N.S. v. C and M.S.*, Ky., 642 S.W.2d 589 (1983).

Stephen's POINT A in his red-covered brief raised the error that Judge Cunningham neither used nor recited the required "clear and convincing evidence" standard in this termination and adoption. None of Judge Cunningham's orders or judgments recite *any* standard of proof. The 3-judge panel addresses this POINT in 3 paragraphs at pages 2, 3, and 4, beginning with

the statement on page 2 "S.R.B.'s first assignment of error is ...." The panel spends more than half of the 3 paragraphs in irrelevant quotations, in avoidance of directly confronting that the required standard of proof was neither used nor recited. The panel seems to suggest that this failure is cured by the *quality* of Judge Cunningham's findings. Stephen's POINT A error was not *how many* or *what* findings. The legal error concisely argued by Stephen, straight from *N.S.* and from *Santosky*, was *no evidence standard* used to arrive at findings.

At page 3 of their opinion the panel quotes Finding 2 from Judge Cunningham's September 12, 1995 Order of Adoption. Remarkably, the panel remains silent as to Finding 1. On page 1 of the September 12, 1995 Order of Adoption (in the Appendix) Judge Cunningham stated as follows. "IT IS THE FINDING OF THE COURT: 1. THAT PURSUANT TO KRS 625.025 ...." Judge Cunningham made his findings pursuant to a *fictitious and non-existent* state statute. The case presents an abysmal departure from the accepted and usual course of judicial proceedings.

In Kentucky lack of subject matter jurisdiction cannot be waived. *See Lilly v. O'Brien*, 6 S.W.2d 715 (1928). This was Stephen's POINT F error in his red-covered brief. *Lilly* was briefed in detail at the circuit court, at the Court of Appeals, and at the Supreme Court of Kentucky. There was a lack of subject matter jurisdiction in this case from day one. The 3-judge panel seeks to overcome this insurmountable difficulty by making a statement which is the opposite of published Kentucky case law. Kentucky statute required that Sarah live with Mr. Oliver for at least 3 months before he

could file for adoption. By his own statement Sarah had only lived with him 1 month when he filed his petition. The panel, at page 9, stated as follows. "The original petition was filed on September 14, 1994. An amended petition dated November 11, 1994, was filed of record December 7, 1994." However, Kentucky case law holds: "but an amended petition relates back to the original petition, and, if the original action was filed prematurely, it must be dismissed, carrying the amendments with it." 6 S.W.2d, at 718.

In the middle of page 4 of the opinion the panel states: "The circuit court determined S.R.B. abandoned S.J.B. under KRS 625.090." The panel *omits* stating that this was determined at an *ex parte* trial which Stephen was prohibited from attending and at which the circuit court refused to use the required clear and convincing evidence standard of proof.

This 3-judge panel repeatedly, and on different pages, makes *sua sponte* false statements. One of many possible examples is at page 4: "S.J.B. has resided with her natural mother and J.O. since their marriage in 1985"; *false* (Sarah was not born until *1986* and Mr. Oliver and Ms. Anderson were married in *1994*).

POINT E in Stephen's Court of Appeals Brief began with: "*The intentional complete deprivation of procedural due process for parent Stephen Robert Bodell.*" The panel never addressed one word, in 2 decisions, to this deprivation of due process for a parent.

The panel did make a brief comment in the opinion concerning KRS 625.080, a comment *calculated to deceive*. Near the bottom of page 6 the panel states: "In fact, the record contains a

letter from S.R.B. directed to a member of the bar inquiring as to whether the latter handled adoption cases ...." The panel fails to inform the reader of this opinion that the letter was written to counsel of record Willard Paxton before speaking with Mr. Paxton in person and asking for his help in locating counsel for Stephen. The panel fails to inform the reader that *former* judge Paxton placed the letter in the record with his request to be released from the case *and* fails to inform the reader that *new* judge Cunningham refused to release Mr. Paxton from the case. The *extent* to which Judge Cunningham considered and addressed KRS 625.080, relating to counsel to succeed Mr. Paxton, was a quick, silent shrug of the shoulders in open court on March 7, 1995.

This Petition stated the following at page 15. "In sum: (1) counsel of record, former judge Paxton, refused to appear for Stephen at the *ex parte* August 9, 1995 termination and adoption trial; (2) Judge Cunningham refused, at any time, to even consider appointment of replacement counsel under KRS 625.080; (3) Stephen was prohibited by Kentucky executive branch parole officers, under penalty of immediate imprisonment, from appearing at August 9, 1995 trial or later hearing."

The petitioner respectfully requests the Supreme Court to issue the Writ, to allow a closer look at the egregious deprivation of federal due process in these lower court proceedings.

S. R. Bodell

Stephen Robert Bodell, *Pro se*
P. O. Box 3121
Paducah, KY 42002
270-928-4202

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SUPREME COURT OF KENTUCKY
2001-SC-0449-D
(1999-CA-2445)

STEPHEN ROBERT BODELL, MOVANT

V. CALDWELL CIRCUIT COURT
NO. 1994-AD-00003

MARGARET JANE ANDERSON, ET AL.,
RESPONDENTS

ORDER DENYING DISCRETIONARY REVIEW

The Motion for Discretionary Review is denied.

Stumbo, J., and Brian and Dobbins, Special Justices, would grant discretionary review.

Graves and Johnstone, JJ., not sitting; Special Justices Bard Kevin Brian and Mark W. Dobbins sitting.

ENTERED January 15, 2003.

s/Joseph E. Lambert
Chief Justice

BEST AVAILABLE COPY

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 1999-CA-002445-MR

S.R.B.; APPELLANT

v. ON REMAND FROM THE SUPREME COURT, ACTION NO. 2000-SC-598-D

APPEAL FROM CALDWELL CIRCUIT COURT, HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 94-AD-00003

J.O., M.J.A., AND S.J.B., AN INFANT CITIZEN; APPELLEES

RENDERED: MAY 4, 2001; 2:00 p.m.
NOT TO BE PUBLISHED

OPINION AFFIRMING

BEFORE: GUDGEL, CHIEF JUDGE; DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: This case is vacated and remanded to us by a March 14, 2001, Order of the Kentucky Supreme Court. We previously dismissed this appeal as being untimely filed. Upon remand, we are directed to decide this matter on the merits. We now consider the merits.

Appellant, S.R.B., and appellee, M.J.A., were married on August 12, 1985. One child, S.J.B., was born of the marriage in 1986. The marriage was ended by dissolution in March 1993. In

August 1994, M.J.A. married J.O. On September 14, 1994, M.J.A. and her husband, J.O., filed an action for adoption of S.J.B., then age eight, in the Caldwell Circuit Court. The matter came on for hearing on August 9, 1995. S.R.B., though duly noticed, failed to appear. On September 12, 1995, the circuit court entered judgment terminating S.R.B.'s parental rights and granting the adoption. S.R.B. appeals, *pro se*, from this judgment.[1]

S.R.B.'s first assignment of error is that the circuit court erred by failing to identify the standard of proof for involuntary termination of parental rights as mandated by Kentucky Revised Statutes (KRS) 625.090, which reads in relevant part:

> "(1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:
> (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;
> ....
> (2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:
> ....
> (g) That the parent, for reasons other than

---

1 Appellant's arguments are somewhat difficult to discern; however, we have used our best efforts to do so.

poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;"

The circuit court specifically found that S.R.B. failed to provide essential parental care and protection, essental food, clothing, shelter, medical care, or education from January 1992 until September 1994, the date of the petition filed herein. The circuit court further found S.R.B. abandoned S.J.B. and determined there was no reasonable expectation of significant improvement in his conduct toward S.J.B. in the immediate foreseeable future. Based on these findings, we think the circuit court followed the mandates of KRS 625.090. Additionally, we perceive no error by the circuit court in its findings supporting the adoption. The circuit court specifically stated:

"2. THAT THE FACTS STATED IN THE PETITION FOR ADOPTION ARE ESTABLISHED; THAT ALL LEGAL REQUIREMENTS TO THE ADOPTION HAVE BEEN COMPLIED WITH; THAT THE PETITIONER IS OF GOOD MORAL CHARACTER AND ABLE TO SUPPORT AND MAINTAIN THE INFANT DEFENDANT; AND THAT SAID INFANT DEFENDANT IS SUITABLE FOR ADOPTION AND HER BEST INTEREST WILL BE PROMOTED BY THE ADOPTION; ..."

It is established law that a judgment of adoption itself terminates parental rights by virtue of KRS 199.520(2). See Wright v. Howard, Ky.App., 711 S.W.2d 492 (1986).

S.R.B. further maintains that the circuit court erred in granting an adoption to J.O., who was terminally ill. S.R.B. asserts that the order of adoption constitutes "substantial" and "palpable" error. He, however, cites us to no statute or case law supporting this argument.

In the overall determination as to whether an adoption will be granted, we are guided by the best interest standard. KRS 199.520(1). Under this standard, we are of the opinion that the health of an adopting parent is but a single factor to be considered. This case involves a step-parent adoption. S.J.B. has continuously lived with and been cared for by her natural mother, M.J.A. since birth. M.J.A. has exercised sole custody of S.J.B. since her divorce from S.R.B. The circuit court determined S.R.B. abandoned S.J.B. under KRS 625.090. S.J.B. has resided with her natural mother and J.O. since their marriage in 1985. It appears that J.O. was in failing health, and that he desired to effect the adoption before his death so as to make S.J.B. his heir. Under the circumstances, we are not convinced that J.O.'s health alone was sufficient to preclude the adoption.

S.R.B. next asserts that the circuit court did not "strictly comply with adoption laws of Kentucky." Specifically, he cites KRS 600.010(2)(c), which reads: "(2) KRS Chapters 600 to 645 shall be interpreted to effectuate the following express legislative purposes: .... (c) The court shall show that other less restrictive

alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary." The circuit court expressly found that S.R.B. abandoned S.J.B. By this finding, we think the circuit court implicitly concluded there were no "less restrictive alternatives" available. Additionally, we are of the opinion that KRS 600.010(2)(c) is not applicable to the instant case. The record indicates that S.J.B. had been in the custody of her mother since birth, and, thus, we do not believe that she was removed from her family, as contemplated by the statute.

S.R.B. claims the circuit court erred by denying his motion to dismiss the petition. We view this argument to be without merit. Simply put, the pleadings stated a claim for which relief could be and was granted. See Quick v. City of Louisville, Ky.App., 613 S.W.2d 428 (1980). We perceive no error in the circuit court's failure to enter a CR 12 dismissal.

S.R.B. argues that the circuit court failed to follow the holding in Wright, 711 S.W.2d 492. Specifically, S.R.B. directs our attention to what that court referred to as a "'catch-22' situation". The catch-22 situation in Wright involved a father denied visitation and relieved of support obligation. In Wright, the Court held that the father did not abandon his children under the circumstances. S.R.B. seeks to draw an analogy between Wright and the case *sub judice*. S.R.B. asserts that a condition of his parole was that he have no contact with S.J.B. The conditions of probation and parole were dated September 29, 1994. Under the precepts of Wright, S.R.B.

contends his compliance with the parole condition cannot be considered in determining abandonment of a child. The circuit court found that S.R.B. abandoned the child in 1992; thus, the circuit court's finding of abandonment was not predicated upon the lack of contact owing to the parole condition. As such, we do not view Wright as dispositive, and we perceive no error.

S.R.B. contends that he was denied legal representation as required by KRS 625.080, which provides, in relevant part, as follows:

> "In any involuntary action for termination of parental rights:
>
> ....
>
> (3) The parents have the right to legal representation in involuntary termination actions. The Circuit Court shall determine if the parent is indigent and, therefore, entitled to counsel pursuant to KRS Chapter 31. If the Circuit Court so finds, the Circuit Court shall inform the parent; and, upon request, if it appears reasonably necessary in the interest of justice, the Circuit Court shall appoint an attorney to represent the parent pursuant to KRS Chapter 31 to be provided or paid for by the Finance and Administration Cabinet at a fee to be set by the court and not to exceed five hundred dollars ($500);"

S.R.B. directs us to nothing in the record to support this contention. In fact, the record contains a letter from S.R.B. directed to a member of the bar inquiring as to whether the latter handled adoption cases and expressing an intent to engage an attorney to represent him.

This Court is, of course, not bound to scour the record. See Martin v. Oliver, 295 Ky. 624,

175 S.W.2d 127 (1943). Upon the whole, we deem this assignment of error to be without merit.

S.R.B. also contends that the circuit court lacked jurisdiction because of a pending notice for certification of judicial qualification under KRS 26A.020, which reads in relevant part:

> "If either party files with the circuit clerk his affidavit that the judge will not afford him a fair and impartial trial, or will not impartially decide an application for a change of venue, the circuit clerk shall at once certify the facts to the Chief Justice who shall immediately review the facts and determine whether to designate a regular or retired justice or judge of the Court of Justice as special judge."

On August 1, 1995, S.R.B. filed two motions for certification of judicial disqualification in the Caldwell Circuit Court. Both motions came on for hearing August 8, 1995. S.R.B. failed to appear, and the motions were dismissed on August 14, 1995. S.R.B. then petitioned the Court of Appeals for a writ of prohibition and/or mandamus on September 14, 1995. Therein, S.R.B. again sought certification of judicial disqualification under KRS 26A.020. On November 9, 1995, the Court of Appeals denied the motion and determined S.R.B. should seek his remedy in circuit court. S.R.B. then appealed to the Supreme Court of Kentucky on December 8, 1995. The Supreme Court affirmed the Court of Appeals by order dated May 23, 1996.

S.R.B. asserts he was given leave by the Supreme Court to re-file his motion for certification of judicial disqualification. In its

opinion, the Supreme Court stated:

> "While KRS 26A.020 provides a mechanism for an affidavit to be submitted to the Chief Justice for the appointment of a special judge if circumstances permit, such does not, and cannot, involve motions before the trial court. Motions seeking the recusal of the trial judge, which are then presented for hearing by that same trial judge, can then be properly considered by him. The judgment of the Court of Appeals is affirmed in all respects; provided, however, appellant may re-file his affidavit for recusal pursuant to KRS 26A.020."

We believe the Supreme Court simply noted that S.R.B. could re-file in the Caldwell Circuit Court. S.R.B., however, never re-filed his motion under KRS 26A.020. As such, there is no "pending" motion for certification of judicial disqualification. We are of the opinion the Caldwell Circuit Court was well within its jurisdiction to proceed in this case.

S.R.B.'s final assignment of error is that the circuit court lacked subject matter jurisdiction. Specifically, S.R.B. contends that the original pleadings did not aver that S.J.B. had continuously resided with J.O. for at least ninety days prior to filing. As such, S.R.B. contends the circuit court acted without jurisdiction pursuant to KRS 199.470(3), which reads:

> "If a child is placed for adoption by the cabinet, by an agency licensed by the cabinet, or with written approval by the secretary of the cabinet, the petition may be filed at the time of placement. In all other adoptions, the petition shall not be filed until the child has

resided continuously in the home of the petitioner for at least ninety (90) days immediately prior to the filing of the adoption petition."

The original petition was filed on September 14, 1994. An amended petition dated November 11, 1994, was filed of record December 7, 1994. J.O. and M.J.A. were married August 11, 1994, more than ninety days prior to the date of the amended petition. Moreover, the circuit court found "that all legal requirements to the adoption have been complied with; ..." Thus, we believe the circuit court did not act outside of its jurisdiction under KRS 199.470(3).

Finally, having reviewed the record in this matter in its entirety and having examined the arguments advanced on appeal, we perceive no error by the circuit court in granting the adoption.

For the foregoing reasons, the judgment of the Caldwell Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:
S.R.B., Pro Se
Paducah, Kentucky

BRIEF FOR APPELLEE, M.J.A.:
Willard B. Paxton
Princeton, Kentucky

SUPREME COURT OF KENTUCKY
2000-SC-598-D
(1999-CA-2445-MR)

STEPHEN ROBERT BODELL, MOVANT

v. CALDWELL CIRCUIT COURT
1994-AD-3

MARGARET JANE ANDERSON, ET AL.,
RESPONDENTS

OPINION AND ORDER

The motion for review of the decision of the Court of Appeals is granted, the Court of Appeals opinion and order dismissing is vacated, and the case is remanded to the Court of Appeals for decision on the merits as fully briefed.

Although movant's timely postjudgment motion (filed on September 22, 1995) remained pending for nearly four years, his appeal was pursued in a timely manner following entry of the only order resolving his request for postjudgment relief on September 9, 1999. The order signed in November of 1995 and entered in January of 1996 addressed only Johnny Oliver's postjudgment motion.

Graves and Johnstone, JJ., not sitting.

Lambert, C.J., Cooper, Keller, Stumbo and Wintersheimer, JJ., and Special Justices Carl J. Bensinger and W. Douglas Myers all concur.

ENTERED March 14, 2001.

s/Joseph E. Lambert
Chief Justice

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 1999-CA-002445-MR

S.R.B.; APPELLANT

v. APPEAL FROM CALDWELL CIRCUIT COURT, HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 94-AD-00003

J.O., M.J.A., AND S.J.B., AN INFANT CITIZEN; APPELLEES

RENDERED: JUNE 9, 2000; 10:00 A.M.
NOT TO BE PUBLISHED

OPINION AND ORDER DISMISSING

BEFORE: GUDGEL, CHIEF JUDGE; DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: S.R.B. brings this appeal from a September 9, 1999, order of the Caldwell Circuit Court.

On September 12, 1995, the circuit court entered a Judgment of Adoption. Therein, one S.J.B., the child of S.R.B., was adjudged the adopted child of one J.O. Her legal name was changed to S.J.O. On September 22, 1995, S.R.B. filed a motion to vacate/motion for new trial under Ky.R.Civ.P. (CR) 59. He alleged error in the involuntary termination of his parental rights and the subsequent adoption of S.J.B. J.O. also filed a motion to alter, amend, or vacate judgment of adoption. J.O. requested the court

amend its order so that the child's name remain S.J.B. On January 24, 1996, the circuit court entered "Amended Judgment of Adoption." Therein, the court reiterated word for word the original judgment of adoption but changed the child's legal name back to S.J.B. Some three years later, the circuit court entered two orders on September 9, 1999. One order specifically "granted" J.O.'s motion and *again* changed the child's legal name to S.J.B.; the other order specifically denied S.R.B.'s motion. On October 8, 1999, S.R.B. filed a notice of appeal to this Court. Therein, he seeks to appeal from the September 12, 1995, Judgment of Adoption, the January 24, 1996, Amended Judgment of Adoption, and the September 9, 1999, Order.

We are of the opinion S.R.B.'s notice of appeal was untimely filed under CR 73.02. That rule requires the notice of appeal to be filed within thirty days after the date of notation on the docket of service of the judgment.

In the case at hand, the record reveals the circuit court entered an Amended Judgment of Adoption on January 24, 1996. The amended judgment was entered pursuant to timely filed motions to vacate under CR 59.05. We believe the amended judgment effectively disposed of the pending CR 59.05 motions and became final and appealable on the date it was entered, January 24, 1996. *Cf. Herring v. Moore,* Ky.App., 561 S.W.2d 95 (1977) (holding that a cross-appeal could not be taken from a judgment which was later amended pursuant to a timely motion under CR 59.05). We view the circuit court's September 9, 1999, rulings upon the CR 59.05 motions as simply superfluous.

In sum, we hold S.R.B.'s notice of appeal was untimely filed under CR 76.02 and hereby ORDER the appeal DISMISSED.

ALL CONCUR.

ENTERED: June 9, 2000

s/John D. Miller
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:
S.R.B., Pro Se
Paducah, Kentucky

BRIEF FOR APPELLEE, M.J.A.:
Willard B. Paxton
Princeton, Kentucky

COMMONWEALTH OF KENTUCKY
CALDWELL CIRCUIT COURT
CIVIL ACTION NO. 94-AD-00003

JOHNNY OLIVER, PETITIONER

VS ORDER

MARGARET JANE ANDERSON,
STEPHEN ROBERT BODELL, AND
SARAH JANE BODELL, AN INFANT,
RESPONDENTS

The Respondent, Stephen Robert Bodell, filed a motion on September 29, 1995, to continue as well as a motion to alter, amend or vacate judgment of adoption. The Court in reviewing the file and from its own recollection concludes that the Respondent failed to appear at the designated time for these motions. However, the Court never formally entered an order ruling on said motions.

THEREFORE, IT IS HEREBY ORDERED AND DIRECTED that Respondent, Stephen Robert Bodell's, motion to continue and motion to alter, amend or vacate filed on September 29, 1995, are hereby DENIED.

This 5th day of September, 1999.

s/Bill Cunningham
Bill Cunningham
Circuit Judge

ENTERED: SEP 9 1999
CALDWELL CIRCUIT CLERK

COMMONWEALTH OF KENTUCKY
CALDWELL CIRCUIT COURT
CIVIL ACTION NO. 94-AD-00003

JOHNNY OLIVER, PETITIONER

VS ORDER

MARGARET JANE ANDERSON,
STEPHEN ROBERT BODELL, AND
SARAH JANE BODELL, AN INFANT,
RESPONDENTS

The Petitioner, Johnny Oliver, moved the Court to amend the Order and Judgment of Adoption so the child's name would not be changed to Sarah Jane Oliver, but in fact remain Sarah Jane Bodell. Said motion was filed on September 22, 1995, pursuant to Local Rule 4.02 and Kentucky Civil Rule 78(2). No objection having been filed within ten days, IT IS HEREBY ORDERED AND DIRECTED that said motion is GRANTED, and the child's name shall remain Sarah Jane Bodell.

This 5th day of September, 1999.

s/Bill Cunningham
Bill Cunningham
Circuit Judge

ENTERED: SEP 9 1999
CALDWELL CIRCUIT CLERK

COMMONWEALTH OF KENTUCKY
CALDWELL CIRCUIT COURT
CIVIL ACTION, FILE NO. 94-AD-00003

JOHNNY OLIVER, PETITIONER

vs AMENDED JUDGMENT OF ADOPTION

MARGARET JANE ANDERSON
AND
STEPHEN ROBERT BODELL
AND
SARAH JANE BODELL, AN INFANT,
DEFENDANTS

THIS CAUSE COMING ON TO BE HEARD BEFORE THE JUDGE OF THE CALDWELL CIRCUIT COURT, THE PETITIONER BEING PRESENT AND REPRESENTED BY COUNSEL, AND THE DEFENDANT, MARGARET JANE ANDERSON, BEING PRESENT AND THE DEFENDANT, STEPHEN ROBERT BODELL, NOT BEING PRESENT BUT HAVING NOTICE OF THE HEARING; THE COURT-APPOINTED GUARDIAN AD LITEM, HON. JOE BAKER BEING PRESENT, AND THE COURT HAVING CONDUCTED A HEARING THEREON;

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

THAT THE DEFENDANT, SARAH JANE BODELL, IS THE ADOPTED CHILD OF THE PETITIONER, JOHNNY OLIVER; THAT HER LEGAL NAME AND DESIGNATION HENCEFORTH IS SARAH JANE BODELL; THAT THE DEFENDANT, SARAH JANE BODELL, SHALL BE DEEMED AND CONSIDERED FOR

THE PURPOSES OF INHERITANCE AND SUCCESSION, AND FOR ALL OTHER LEGAL CONSIDERATIONS THE NATURAL CHILD OF THE PETITIONER, JOHNNY OLIVER.

DATED THIS 7th DAY OF Nov., 1995.

s/Bill Cunningham
JUDGE, CALDWELL CIRCUIT COURT

PREPARED BY:

s/Jill L. Giordano
QUERTERMOUS & GIORDANO
JILL L. GIORDANO
ATTORNEY FOR PETITIONER
108 EAST COURT SQUARE
P. O. BOX 187
PRINCETON, KENTUCKY 42445
(502) 365-9515

ENTERED: JAN 24 1996
CALDWELL CIRCUIT CLERK

COMMONWEALTH OF KENTUCKY
CALDWELL CIRCUIT COURT
CIVIL ACTION, FILE NO. 94-AD-003

JOHNNY OLIVER, PETITIONER

vs JUDGMENT OF ADOPTION

MARGARET JANE ANDERSON
AND
STEPHEN ROBERT BODELL
AND
SARAH JANE BODELL, AN INFANT,
DEFENDANTS

THIS CAUSE COMING ON TO BE HEARD BEFORE THE JUDGE OF THE CALDWELL CIRCUIT COURT, THE PETITIONER BEING PRESENT AND REPRESENTED BY COUNSEL, THE DEFENDANT, MARGARET JANE ANDERSON, BEING PRESENT AND THE DEFENDANT, STEPHEN ROBERT BODELL, NOT BEING PRESENT BUT HAVING NOTICE OF THE HEARING; THE COURT-APPOINTED GUARDIAN AD LITEM, HON. JOE BAKER BEING PRESENT, AND THE COURT HAVING CONDUCTED A HEARING THEREON;

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

THAT THE DEFENDANT, SARAH JANE BODELL, IS THE ADOPTED CHILD OF THE PETITIONER, JOHNNY OLIVER; THAT HER LEGAL NAME AND DESIGNATION HENCEFORTH IS SARAH JANE OLIVER; THAT THE DEFENDANT, SARAH JANE OLIVER, SHALL BE DEEMED AND CONSIDERED FOR

THE PURPOSES OF INHERITANCE AND SUCCESSION, AND FOR ALL OTHER LEGAL CONSIDERATIONS THE NATURAL CHILD OF THE PETITIONER, JOHNNY OLIVER.

DATED THIS 11th DAY OF Sept., 1995.

s/Bill Cunningham
JUDGE, CALDWELL CIRCUIT COURT

PREPARED BY:

s/Jill L. Giordano
QUERTERMOUS & GIORDANO
JILL L. GIORDANO
ATTORNEY FOR PETITIONER
108 EAST COURT SQUARE
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(502) 365-9515

ENTERED: SEP 12 1995
CALDWELL CIRCUIT CLERK

COMMONWEALTH OF KENTUCKY
CALDWELL CIRCUIT COURT
CIVIL ACTION, FILE NO. 94-AD-003

JOHNNY OLIVER, PETITIONER

vs ORDER OF ADOPTION

MARGARET JANE ANDERSON
AND
STEPHEN ROBERT BODELL
AND
SARAH JANE BODELL, AN INFANT,
DEFENDANTS

THIS CAUSE COMING ON TO BE HEARD BEFORE THE JUDGE OF THE CALDWELL CIRCUIT COURT, THE PETITIONER BEING PRESENT AND REPRESENTED BY COUNSEL, THE DEFENDANT, MARGARET JANE ANDERSON, BEING PRESENT AND THE DEFENDANT, STEPHEN ROBERT BODELL, NOT BEING PRESENT BUT HAVING NOTICE OF THE HEARING; THE DEPARTMENT OF HUMAN RESOURCES HAVING FILED ITS REPORT AND THE COURT HAVING CONDUCTED A HEARING THEREON, HEARING THE TESTIMONY OF THE PETITIONER, THE DEFENDANT, MARGARET JANE ANDERSON, AND OTHER WITNESSES OF PETITIONER, AND EXAMINED THE RECORD;

IT IS THE FINDING OF THE COURT:

1. THAT PURSUANT TO KRS 625.025, THE RESPONDENT AND FATHER OF THE MINOR CHILD SARAH JANE BODELL, STEPHEN ROBERT BODELL, HAS FAILED TO PROVIDE ESSENTIAL PARENTAL CARE AND

PROTECTION; HAS FAILED TO PROVIDE ESSENTIAL FOOD, CLOTHING, SHELTER, MEDICAL CARE OR EDUCATION NECESSARY FOR THE CHILD'S WELL BEING FOR A PERIOD OF TIME FROM JANUARY 1992, TO AND UNTIL THE DATE OF THE FILING OF THE PETITION HEREIN; AND FURTHER STEPHEN ROBERT BODELL HAVING ABANDONED SAID CHILD; AND FURTHER THERE IS NO REASONABLE EXPECTATION OF SIGNIFICANT IMPROVEMENT IN STEPHEN ROBERT BODELL'S CONDUCT IN THE IMMEDIATE FORESEEABLE FUTURE.

2. THAT THE FACTS STATED IN THE PETITION ARE ESTABLISHED; THAT ALL LEGAL REQUIREMENTS TO THE ADOPTION HAVE BEEN COMPLIED WITH; THAT THE PETITIONER IS OF GOOD MORAL CHARACTER AND ABLE TO SUPPORT AND MAINTAIN THE INFANT DEFENDANT; AND THAT SAID INFANT DEFENDANT IS SUITABLE FOR ADOPTION AND HER BEST INTEREST WILL BE PROMOTED BY THE ADOPTION;

AND THE COURT BEING OTHERWISE SUFFICIENTLY ADVISED;

IT IS ORDERED AND ADJUDGED:

THAT THE PARENTAL RIGHTS OF STEPHEN ROBERT BODELL, BE, AND THE SAME ARE HEREBY TERMINATED.

THAT A JUDGMENT BE DRAWN, THAT THE INFANT DEFENDANT, SARAH JANE BODELL, IS THE ADOPTED CHILD OF THE PETITIONER, JOHNNY OLIVER.

DATED THIS 11th DAY OF Sept., 1995.

s/Bill Cunningham
JUDGE, CALDWELL CIRCUIT COURT

PREPARED BY:

s/Jill L. Giordano
QUERTERMOUS & GIORDANO
JILL L. GIORDANO
ATTORNEY FOR PETITIONER
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PRINCETON, KENTUCKY 42445
(502) 365-9515

ENTERED: SEP 12 1995
CALDWELL CIRCUIT CLERK

SUPREME COURT OF KENTUCKY
2001-SC-449-D

STEPHEN ROBERT BODELL, MOVANT

V. ON REVIEW FROM COURT OF APPEALS NO. 1999-CA-002445-MR, CALDWELL CIRCUIT COURT NO. 94-AD-00003

MARGARET JANE ANDERSON, ET AL., RESPONDENTS

ORDER

Both Justice Graves and Justice Johnstone having agreed to recuse themselves from consideration of the above-styled action, movant's *pro-se* motion for recusal is hereby granted.

ENTERED: August 15, 2002.

s/Joseph E. Lambert
Chief Justice

SUPREME COURT OF KENTUCKY
95-SC-1047-MR

STEPHEN ROBERT BODELL, APPELLANT

v. APPEAL FROM COURT OF APPEALS
NO. 95-CA-2455-OA

BILL CUNNINGHAM, JUDGE, CALDWELL CIRCUIT COURT; JO ANN NEWSOM, CLERK, CALDWELL CIRCUIT COURT; JOHNNY OLIVER; MARGARET JANE ANDERSON, A/K/A JANE A. BODELL; and JOSEPH C. BAKER; APPELLEES

OPINION AND ORDER

On August 1, 1995, appellant filed two motions for certification of judicial disqualification with accompanying affidavits which were noticed for a hearing on August 8, 1995, in the Caldwell Circuit Court. Appellant, however, failed to appear and the motions were subsequently dismissed. His petition for writ of prohibition and/or mandamus was denied in the Court of Appeals, which found that:

> The respondent judge has neither refused to proceed, nor erroneously proceeded on a subject within his jurisdiction. KRS 26A.020 does not require that a motion be filed in order for a circuit court to certify a judicial disqualification matter to the Chief Justice. However, petitioner filed such a motion and the respondent judge disposed of it. Further, the court notes the statement by the respondent judge that he has no

objection in recusing and allowing another judge to deal with petitioner's post-judgment motions and proceedings. Consequently, petitioner may obtain the relief which he seeks in this petition by filing a motion in the Caldwell Circuit Court.

Bodell v. Cunningham, Ky.App., 95-CA-2455-OA, at 2 (Nov. 8, 1995).

We agree. While KRS 26A.020 provides a mechanism for an affidavit to be submitted to the Chief Justice for the appointment of a special judge if circumstances permit, such does not, and cannot involve motions before the trial court. Motions seeking the recusal of the trial judge, which are then presented for hearing by that same trial judge, can then be properly considered by him. The judgment of the Court of Appeals is affirmed in all respects; provided, however, appellant may refile his affidavit for recusal pursuant to KRS 26A.020.

Baker, Graves, King, Lambert, Stumbo and Wintersheimer, JJ., concur. Stephens, C.J., not sitting.

ENTERED: May 23, 1996

s/Joseph E. Lambert
DEPUTY CHIEF JUSTICE

COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE
CALDWELL COUNTY CIRCUIT COURT
CASE NO. 94-AD-00003

JOHNNY OLIVER, PLAINTIFF

V. WARNING ORDER

MARGARET JANE ANDERSON, ET AL,
DEFENDANT

The Defendant STEPHEN ROBERT BODELL is warned to appear and answer the petition of the Plaintiff JOHNNY OLIVER herein filed against him, not later than fifty (50) days after the date of this order.

HON. WILLARD B. PAXTON, a regular practicing attorney of this Court, is appointed to correspond with the Defendant, and to inform him by mail concerning the pendency and nature of this action, and to file his report in the Clerk's office of this Court within fifty (50) days after the date of this order.

SEPT. 15, 1994

Jo Ann Newsom, Clerk
s/Cindy Creekmur
Deputy Clerk

FILED: SEP 15 1994
CALDWELL CIRCUIT CLERK

COMMONWEALTH OF KENTUCKY
CALDWELL CIRCUIT COURT
PRINCETON, KENTUCKY 42445
CIVIL ACTION NO. 94-AD-00003

JOHNNY OLIVER, PETITIONER

VS. ENTRY OF APPEARANCE

MARGARET JANE ANDERSON, AND
STEPHEN ROBERT BODELL, AND
SARAH JANE BODELL, AN INFANT
DEFENDANTS

Comes now, Willard B. Paxton, and enters his appearance in this action, for, Margaret Jane Anderson.

This the 2nd day of November, 1998.

s/Willard B. Paxton
WILLARD B. PAXTON
Attorney at Law
P. O. Box 478
Princeton, KY 42445
502 365 6555
COUNSEL FOR DEFENDANTS

FILED: NOV 3 1998
CALDWELL CIRCUIT CLERK

AFFIDAVIT

The affiant, Ralph H. Buford, after being sworn does hereby state as follows:

1. The affiant's name is Ralph H. Buford, and the affiant is 62 years of age.

2. The affiant is acquainted with Stephen R. Bodell, formerly an attorney at law in Paducah, Kentucky.

3. During the afternoon of Tuesday, August 8, 1995, at the request of Mr. Bodell, this affiant handed a state court subpoena to Mr. P. M. Lehman in his office in Paducah, Kentucky.

4. Mr. Lehman read the subpoena, and then asked Mr. Bodell if this affiant was qualified to serve a subpoena. Mr. Bodell stated that this affiant was qualified to serve a subpoena.

5. Mr. Lehman then stated that he would have to speak with his boss concerning the subpoena. Mr. Lehman went to another part of the building for a few minutes.

6. Upon his return Mr. Lehman stated that he would have to contact general counsel in Frankfort concerning this subpoena. Mr. Lehman then asked Mr. Bodell why he wanted this information.

7. Mr. Bodell stated that he expected his daughter's mother, Jane Anderson Bodell a/k/a Margaret Jane Anderson, would lie in court proceedings concerning his daughter, and that he was seeking to establish the truth.

8. Mr. Lehman then told Mr. Bodell to be sure and not attempt to question the child's mother in any legal proceedings, or he would be facing "violation". Mr. Bodell asked if that meant he could not cross-examine the child's

mother in a hearing or take her deposition. Mr. Lehman answered that no contact meant no contact.

9. Mr. Bodell and this affiant then left the building.

Given under my hand this 11 day of September, 1995.

s/Ralph H. Buford
Ralph H. Buford
Affiant

COMMONWEALTH OF KENTUCKY
COUNTY OF MCCRACKEN
The foregoing Affidavit was subscribed and sworn to before me by Ralph H. Buford this 11 day of September, 1995.

s/Larinda Puckett-Hall
Notary Public
My commission expires: 5/23/98